IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 959 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVJI GANDAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:
MR NITIN M AMIN for Petitioner
MR AJ DESAI,APP for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

1. This appeal is filed by the appellant Baldevji Gandaji Thakore wherein he has challenged the judgment and order dated 13.9.1996 passed in Sessions Case No.20 of 1994 by the learned Addl. Sessions Judge, Ahmedabad Rural at Mirzapur, convicting him for offence punishable under section 302 of IPC and sentencing him to suffer R.I. for life. The learned judge, however, acquitted the other two accused.

2. The incident in question took place on 14.5.1994 at about 9.00 p.m. at village Indroda of Gandhinagar District when the appellant and other two accused wanted to pass through the wadi of complainant Juhaji Nathaji, PW 2. All the accused were prevented by deceased Pratapji from passing through the wadi, as a result of which, all the accused got enraged. The appellant inflicted a stick blow on the head of the deceased; the original accused no.2 gave a stick blow on the back of the deceased while the original accused no.3 inflicted stick blow on the head of the deceased. The injured Pratapji was removed to General Hospital, Gandhinagar at about 10.50 p.m. Dr. RI Patel, Medical Officer who treated the injured ultimately referred him to Civil Hospital, Ahmedabad. The injured was given treatment at Civil Hospital, Ahmedabad. However,he succumbed to the injuries on 20.5.1994.

3. Dr. Vinayakrao Vasudevrao Patil, who performed the post-mortem of the deceased found one injury on the right side of head of the deceased of about 21.5 cm long involving temporal and parietal region of the head. According to doctor, the death was due to shock as a result of head injury.

4. The incident in question was witnessed by Juhaji Nathaji,PW 2, Hemtuji Mathurji, PW 3, Shantaben Juhaji, PW 4 and Bhikhaji Ashaji, PW 5. According to the complainant Juhaji Nathaji, the incident had taken place on 14.5.1994 when he was sitting on his cot with Savdhanji and one Bavaji; his son Pratapji was standing near the fence. The accused were also sitting on their cots. At that time, the deceased Pratapji told the accused not to pass through their wadi. The accused replied that the property belonged to their grand father and, therefore, they would definitely pass through the same. The deceased Pratapji told that the panchayat had already taken a decision that the land belonged to them. At that time, the accused got excited and started giving abuses. The accused no.1 Baldevji gave a stick blow on the head of Pratapji with the result Pratapji fell down. The accused no.2 threw a wooden log which hit the back of

Pratapji. The accused no.3 started dragging Pratapji by shouting "kill him". As many persons gathered, all the accused fled away. Pratapji became unconscious. He was thereafter taken to the Civil Hospital, Gandhinagar in rickshaw. The doctor, after giving primary treatment, transferred him to Civil Hospital, Ahmedabad. The injured died in the Civil Hospital. The complainant lodged complaint. This witness has been cross examined at length. However, nothing substantial has been brought out from his evidence. Similar is the evidence of eye witnesses who have substantially supported the evidence of complainant Juhaji. There is no reason to doubt the oral testimony of eye witnesses. In our opinion, the learned trial judge was justified in relying upon the oral testimony of complainant as well as other eye witnesses.

5. Mr.N.M.Amin, learned advocate appearing for the appellant conceded before us and in our opinion, rightly that he is not in a position to challenge the evidence of eye witnesses. In other words, Mr. Amin has stated that on going through the evidence of the eye witnesses, there is no case of clean acquittal as far as the appellant is concerned. Mr. Amin, however, has submitted that considering the manner in which the incident has taken place, namely that the appellant had given a single blow using the stick in heat of altercation, there was no intention to kill the deceased and, therefore, in the submission of Mr. Amin, conviction for offence punishable under section 302 of IPC is not proper. Mr. Amin, therefore, submitted that the appellant, at the most, can be convicted for offence punishable under section 304 Part II of IPC.

6. We quite see the point canvassed before us. Even if the entire prosecution case is believed, the incident happened in a heat of altercation between the deceased and the accused. Admittedly, deceased died because of the injury sustained on his head and that is also after six days. The appellant admittedly did not give more than one blow. There was no premeditation on the part of the accused. It is unfortunate that the deceased died because of a single blow of stick having been used by the appellant. Therefore, the conviction for offence punishable under section 302 of IPC is not proper. We are of the opinion that the offence is one punishable under section 304 Part II of IPC.

7. In this view of the matter, we set aside the judgment and order passed by the learned Addl. Sessions

Judge, Ahmedabad Rural at Mirzapur, convicting the appellant for offence punishable under section 302 of IPC. Instead, we convict the appellant for offence punishable under section 304 Part II of IPC and sentence him to suffer R.I. for five years and to pay a fine of Rs. 15000/-, in default, to undergo further R.I. for two years. The appellant is granted time of three weeks from today to deposit the amount of fine. On realisation of the amount of fine, the trial court shall disburse the same to PW 3 Shantaben Juhaji, mother of deceased, after proper verification. Appeal is accordingly partly allowed. Direct Service.

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